IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 255 OF 2007.

Kanwal Gurbaksh Singh. ... Appellant.
Versus.
M/s.Goregaon Sports Club and others. ... Respondents.

Shri A.S.Rai for the Appellant.

Shri Naushad Engineer i/by M/s.RMG Law Associates for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appeal is by the original Plaintiff taking exception to the order dated 6th February 2007 passed by the learned Judge of the City Civil Court at Mumbai, by which Notice of Motion for temporary injunction filed by the Appellant/Plaintiff was dismissed.

2. It is not in dispute that the present Appellant/ Plaintiff had filed Suit No.2733 of 2002 against the 1st Respondent herein for the same relief. On 30th January 2006, the said suit was withdrawn by the Appellant with liberty to file a fresh suit after obtaining sanction of the Charity Commissioner under section 50 of the Bombay Public Trusts Act, 1950 and after joining all the Trustees of the 1st Respondent.

3. Thus the earlier suit for an identical relief

was withdrawn by the present Appellant by invoking Sub-Rule (3) of Rule 1 of Order XXIII of the Code of Civil Procedure, 1908. The earlier suit was withdrawn obviously because it was likely to fail by reason of a formal defect of not obtaining a sanction of the Charity Commissioner as required by section 50 of the said Act of 1950. It is not in dispute that the present suit is filed by the Appellant without obtaining the sanction of the Charity Commissioner.

4. On his own showing the fresh suit filed by the Appellant was not maintainable without obtaining a sanction. Considering this aspect, the trial Court came to the conclusion that, primafacie, the suit was not maintainable. On this ground, the Notice of Motion taken out by the Appellant has been dismissed.

5. I find no error in the view taken by the trial Court. The Appeal is dismissed with no order as to costs.

Judge.